

**Proposed Rule Amendments
November 2012 Oregon Bulletin**

MORTUARY AND CEMETERY BOARD

830-020-0030

Reciprocal Licensure

(1) An applicant for reciprocal licensure must apply to the Board on the most current form provided by the Board. The application must be accompanied by the following:

(a) The reciprocal fee as prescribed by OAR 830-020-0040;

(b) A certified copy of the applicant's birth certificate;

(c) A certified copy of transcripts from a school accredited by an Association of Schools and Colleges demonstrating completion of an Associate's degree or higher degree (for funeral service practitioner licensure) or proof of passing an accredited course of funeral service education (for embalmer licensure);

(d) A certification from the state(s) the applicant is or was licensed in that includes: length of apprenticeship, if any, examination score, date licensed, status of license at the present time, and whether the applicant's license has ever been suspended or revoked or other disciplinary action taken;

(e) Proof that the applicant is or was licensed and has practiced, respectively, as a funeral service practitioner or an embalmer in another state for three of the past five years immediately preceding the respective application date; and

(2) An applicant for reciprocal funeral service practitioner license must pass the Board's funeral service practitioner examination as a means of providing satisfactory proof to the Board that the applicant has the requisite qualifications for licensing as a funeral service practitioner in this state. The examination must include questions related to:

(a) Oregon and federal laws, rules and regulations relating to the care, preparation, disposition and transportation of human remains; and **survivor death benefits.**

(b) ~~survivor death benefits.~~ Reciprocal applicants for funeral service practitioner license must receive a score of not less than 75 percent, based on the total number of questions, in order to pass the examination. Reciprocal applicants are eligible to take the examination at the regularly scheduled examination dates if their examination application is received at least 14 days prior to the examination date.

(3) Applicants for reciprocal embalmer licensure must show evidence satisfactory to the Board that the applicant has successfully passed the National Board Examination as administered by the Conference of Funeral Service Examining Boards or an equivalent examination written by the Conference of Funeral Service Examining Boards. The examination must include two sections, funeral service arts and funeral service sciences, and the applicant must receive a cumulative average score of at least 75 percent on the sections with not less than 70 percent on either of these two sections.

(4) A license must not be issued to a reciprocal applicant before a complete background check has been performed and Board approval has been received.

Stat. Auth.: ORS 692.160 & 692.320

Stats. Implemented: ORS 692.140

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12

830-020-0040

License, Certificate and Registration Fees

(1) Initial application fees:

- (a) Funeral establishment, immediate disposition company, crematory, alternative disposition facility or a cemetery that performs more than ten interments annually — \$150 (includes first principal) plus \$50 for each additional principal;
- (b) Cemetery that performs ten or fewer interments annually — an initial fee of \$100 and a fee not to exceed \$50 for registration of all principals regardless of the total number of principals
- (c) Change of principal — \$50 per licensed facility;
- (d) Apprentice funeral service practitioner or apprentice embalmer — \$50;
- (e) Reciprocal funeral service practitioner or reciprocal embalmer — \$160;
- (f) Intern Apprentice — \$25;
- (g) Preneed Salesperson — \$150;
- (h) Certificate of Removal Registration — \$30;
- (i) Funeral Service Practitioner — \$80 per year;
- (j) Embalmer — \$80 per year;
- (k) Death Care Consultant — \$80 per year.

(2) Renewal application fees:

- (a) Funeral establishment or immediate disposition company — \$350 per year, payable biennially;
- (b) Crematory or Alternative Disposition Facility — \$100 per year plus \$2 per disposition performed during the two calendar years preceding the year in which the current license expires, payable biennially;
- (c) Cemetery — \$4 per interment performed during the two calendar years preceding the year in which the current license expires up to a maximum of 150 interments or \$600 per year, payable biennially; (Cemeteries with ten or fewer interments annually are not required to pay a renewal fee in accordance with ORS 692.275.)
- (d) Funeral service practitioner — \$80 per year, payable biennially;
- (e) Embalmer — \$80 per year, payable biennially;
- (f) Combination funeral service practitioner/embalmer — \$160 per year, payable biennially;
- (g) Apprentice funeral service practitioner — \$25 per year, payable annually;
- (h) Apprentice embalmer — \$25 per year, payable annually;
- (i) Preneed salesperson — \$25 per year, payable biennially;
- (j) Death care consultant — \$80 per year, payable biennially.

(3) Exam fees:

(a) Funeral service practitioner exam — \$100;

(b) Embalmer exam (written or practical) — \$130 to \$400 (depending on the cost to the Board).

(c) Death care consultant exam — \$100.

(4) License, certificate and registration reissue fees:

(a) Transfer of apprenticeship, replacement license, name change or manager change — \$25;

(b) Licensed facility location change — \$250.

(5) Reinstatement of lapsed license, certificate or registration — \$50 each.

(6) Funeral service practitioners, embalmers, and preneed salespersons must renew their licenses on even numbered years. Facilities must renew on odd numbered years.

(7) Fees paid under this section are not refundable or transferable. ~~Notwithstanding the above, a registrant for the funeral service practitioner examination may notify the Board in writing that he or she is withdrawing and request a fee refund at any time before the date of the examination.~~

(8) Notwithstanding the above, a registrant for the funeral service practitioner examination may notify the Board in writing that he or she is withdrawing and request a refund of the examination fee at any time before the date of the examination. Examination fee refunds will be refunded to the person or entity that originally paid the examination fee to the board.

Stat. Auth.: ORS 692.160, 692.320 & 97.931

Stats. Implemented: ORS 692.160 & 97.931

Hist.: SMB 1-1984, f. & ef. 10-22-84; MCB 1-1985(Temp), f. & ef. 7-3-85; MCB 2-1985(Temp), f. & ef. 11-5-85; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0110; MCB 2-1989(Temp), f. 10-2-89, cert. ef. 11-1-89; MCB 3-1989, f. 12-4-89, cert. ef. 12-1-89; MCB 1-1992, f. & cert. ef. 2-11-92; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 3-1993, f. 10-28-93, cert. ef. 11-1-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02; MCB 1-2004, f. 9-30-04, cert. ef. 11-1-04; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10; MCB 2-2010, f. 9-23-10, cert. ef. 9-24-10; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12

DIVISION 30

DUTIES OF FUNERAL SERVICE PRACTITIONER CREMATORY AUTHORITY -- CEMETERY AUTHORITY

830-030-0000

In General

(1) No licensee, operator of a licensed facility, or their agent may interfere with another licensee, operator of a licensed facility, or their agent who has been legally called to take care of human remains, or perform services relating to the disposition of human remains. The choice of licensed facility or licensed person must be left entirely to the individual with the legal right to control final disposition

(2) Alternative Disposition Facility Authorities must comply with the requirements in this division (Division 30) for the handling and tracking of human remains prior to, during, and after cremation as if the Alternative Disposition Facility Authority is a Crematory Authority, the alternative disposition remains are cremated remains and the dissolution chamber is a cremation chamber.

(3) Alternative Disposition Facility Authorities using alkaline hydrolysis for dissolution must comply with the following requirements:

(a) The Alternative Disposition Facility Authority must only employ a purpose-built vessel as a dissolution chamber.

(b) Dissolution systems which operate above atmospheric pressure must only employ an American Society of Mechanical Engineers' (ASME) certified pressure vessel as a dissolution chamber.

(c) The dissolution system must use parameters of heat, time and solution circulation sufficient to achieve complete dissolution of all tissue remains.

(d) The Alternative Disposition Facility Authority must ensure that the discharge liquid that is a byproduct of the dissolution process meets the facility's sewage collection and treatment facility requirements regarding acceptable temperature and pH level.

(4) It is the responsibility of the funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11) to ensure that an identifying metal disc with a number assigned by the State Registrar's Office imprinted on the disc is attached to the casket or other receptacle containing human remains, or is attached to the remains if there is no receptacle.

(a) When human remains are to be cremated the identifying metal disc must be secured to the head end of the receptacle, or to the remains if no receptacle is used, at all times until the remains are placed in the cremation chamber.

(b) When human remains are going to be buried or entombed, the identifying metal disc must be attached to the head end of the casket or receptacle, or to the remains if no receptacle is used.

(c) The number on the identifying metal disc must be written or typed on the certificate of death and final disposition permit by the responsible funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11).

(5) It is the responsibility of the Crematory Authority to see that the identifying metal disc accompanies human remains through the cremation process.

(6) It is the responsibility of the Cemetery Authority or Crematory Authority to see that the identifying metal disc is properly secured to each receptacle containing human remains, or, when no receptacle is used, to the remains, when remains are delivered to the facility and that the number on the identifying metal disc is the number recorded on the final disposition permit. The Cemetery Authority or Crematory Authority must sign the final disposition permit verifying this fact prior to accepting the remains. The Cemetery Authority or Crematory Authority may not accept remains without the proper identifying metal disc unless death occurred in a state other than Oregon.

(7) If, when the human remains are delivered to the crematory, cemetery or alternative disposition facility, no metal disc is attached to the receptacle or remains as required, or the disc number does not match the permit number as required, the funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11) must retain responsibility for the proper care and storage of the remains until the correct disc is obtained and ensure it is affixed to the receptacle or remains. If the discrepancy cannot be resolved prior to any scheduled service, the funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11), must take responsibility for notifying the person with the legal right to control final disposition that the disposition is postponed.

(8) If human remains or partial human remains are discovered in a presumed unoccupied grave, crypt or niche when opening the grave, crypt or niche for purposes of an interment, in addition to the reporting requirements of OAR 830-030-0090(1)(e), the cemetery must attempt to identify the found remains. The following shall be the responsibility of the cemetery authority:

(a) If the remains are identified, the cemetery shall update the cemetery records for that grave, crypt or niche to include known information including the decedent's name, date of death, date of interment, State ID Tag

number and the name of the owner of the grave, crypt or niche and the name of the person with the right to control the final disposition of the remains.

(b) If the found remains are not identified the applicable reporting requirements of OAR 830-030-0090(1)(e) shall be followed.

(c) At no time may a cemetery disinter the found remains unless such disinterment is in compliance with ORS 97.220, and at no time may a cemetery inter other human remains in that grave without the written permission of the owner of the grave, the person with the right to control final disposition of the human remains and the cemetery authority.

~~(9)~~ **(9)** When a licensee arranges for the scattering of cremated remains, the licensee must include in their records the final location of the cremated remains and make the identifying metal disc a part of the licensee's permanent record.

~~(9)~~ **(10)** It is the responsibility of the funeral establishment or immediate disposition company licensee handling the disposition of human remains to pay the death certificate filing fee as required in ORS 432.312(1). This fee must be paid within 30 days after the billing and, in no case longer than 90 days after the billing. Failure to pay death certificate filing fees is cause for disciplinary action by the Board.

~~(10)~~ **(11)** It is the responsibility of each licensed facility to assign a manager for each facility and to notify the Board in writing within 30 days of the assignment. In the case of funeral establishments and immediate disposition companies, the manager must be an Oregon licensed funeral service practitioner.

~~(11)~~ **(12)** Upon providing written notification to the Board, a funeral service practitioner may be permitted to manage two funeral establishments or two immediate disposition companies, or one of each. A funeral service practitioner may be authorized by the Board to manage more than two funeral establishments or immediate disposition companies, or a combination of same, upon providing a written request to the Board that describes the basis for the request. The Board may approve the request after consideration of relevant facts or circumstances including, but not limited to, information that the Board may request from the funeral service practitioner.

Stat. Auth.: ORS 692.160 & 692.320

Stats. Implemented: ORS 692.180 & 692.405

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0150; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12

830-030-0070

Transportation and Care of Persons Who Have Died of or With Communicable Diseases

(1) Except for transportation of remains from place of death to a licensed facility or other holding facility, transportation of persons who have died of or with communicable diseases specified by the Oregon ~~State Health Division~~ **Health Authority** shall be permitted only under the following conditions: the human remains shall be thoroughly embalmed with approved disinfectant solution; all orifices shall be closed with absorbent cotton; and the body shall be washed.

(2) Communicable diseases which apply to this section are as follows:

(a) Acquired immunodeficiency syndrome;

(b) Diphtheria;

(c) Hemorrhagic fevers (e.g., Ebola);

(d) Hepatitis B;

- (e) Hepatitis C;
- (f) Hepatitis, delta;
- (g) Human immunodeficiency virus;
- (h) Plague;
- (i) Rabies;
- (j) Tularemia; and
- (k) Tuberculosis.

(3) If religious custom or the conditions of the remains prohibit embalming, a human remains shall be received for transportation by a common carrier if the human remains are placed in a sealed impervious container enclosed in a strong transportation case or in a sound container designed for that that purpose enclosed in a sealed impervious transportation case.

Stat. Auth.: ORS 692.160 & 692.320

Stats. Implemented: ORS 692.025

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11

830-030-0100

Misleading Business Practices

The following practices are prohibited and are considered misrepresentation in the conduct of doing business:

- (1) Any sales presentation or practice that conceals or misstates a material fact is considered a misrepresentation in the conduct of doing business.
- (2) Any guarantee or representation that the prospective purchase would realize a profit by reselling at a later date.
- (3) Any use of interment space used for the interment of human remains including cremated remains, other than those of the owner of that space or interment rights thereto, or placement of other materials belonging to a person other than the owner, without the prior written authorization by the owner of such space or interment rights. If the person authorizing such interment or placement of materials represents that he or she has authority to direct the interment or placement, a licensee is not in violation of this rule if, after due diligence, the licensee reasonably believes such person may direct the interment or placement of materials.
- (4) Any failure to comply with the terms of the sales contracts or state or local law requirements, with respect to irrevocable permanent care, and failure to comply with any other applicable laws and regulations relating to cemeteries.
- (5) Any advertising or other presentation or indication that a licensee is in any way connected with the federal government, any other government agency, or any veterans' or other organization. If a veterans' organization or government agency is referred to in any advertisement, sales program or presentation the licensee must include a disclaimer in bold type to the effect that "This facility is not financed or connected in any manner with any government agency or veteran's or other organization".
- (6) Any use of advertisements, printed materials, forms, or any other materials that resemble or suggest official government documents or publications.

(7) In addition to the provisions of ORS 97.943(8), which provides the purchaser may cancel a revocable prearrangement contract at any time prior to death and receive a full refund including earnings, licensees

must, in their preneed sales contracts, include a reasonable period of not less than five business days during which purchasers may cancel their funeral or cemetery contracts ~~for undelivered goods and services and~~ for delivered goods that are unused or and undamaged, or any contract for interment rights.

(8) Whenever a funeral provider, as defined by the Federal Trade Commission, states a price for a good or service in an internet advertisement, they must also include a link to the facility's effective and complete general price list for funeral goods and services.

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.025 & 692.180

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12

DIVISION 40

FUNERAL ESTABLISHMENTS, IMMEDIATE DISPOSITION COMPANIES, CREMATORIUMS, CEMETERIES AND OPERATORS OF SAME

830-040-0005

Contract Requirements

(1) It is the responsibility of each licensed facility entering into contracts, either at need, prearrangement or preconstruction, for death care goods and services to have printed (in a minimum 10-point print) at the bottom of each contract "This facility is licensed and regulated by the Oregon Mortuary and Cemetery Board" followed immediately by the current area code and phone number of the Oregon Mortuary and Cemetery Board.

(2) Each licensed facility must ensure that all contracts (at need, prearrangement or preconstruction) for death care goods and services have the registered name and physical location of the facility printed, in a minimum 10-point font, on the front of the contract.

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.320

Hist.: MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11

830-040-0050

Advertising

(1) Any licensed facility advertising through any media (including but not limited to telephone books, newspapers, direct mail, bill boards, etc.) must include the licensed facility's registered name and physical address as it appears on the Board's records.

(2) No person, firm or corporation may advertise, promote, or market at need or preneed funeral arrangements without first having received a license from the Board.

(3) No cemetery or cremation facility, or person, firm or corporation may advertise, promote, or market at need or preneed cemetery or cremation plans without first having received a certificate of authority to operate that cemetery or crematorium.

(4) No person, firm or corporation may advertise, promote, or market at need or preneed immediate disposition or alternative disposition arrangements without having first registered with the Board.

(5) Any advertisement or marketing materials which intentionally conceals or misstates a material fact is considered misrepresentation.

(6) Persons, firms or corporations advertising, promoting or marketing trust-funded funeral or cemetery prearrangements must also be registered by the Department of Consumer & Business Services as a certified provider.

Stat. Auth.: ORS 692.160 & 692.320

Stats. Implemented: ORS 692.160

Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0220; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10; MCB 2-2010, f. 9-23-10, cert. ef. 9-24-10; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12